NO. 82-2070

In the Supreme Court

OF THE

United States

OCTOBER TERM 1982

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS,
Appellant,
v.
CHARLES F. MARSLAND, JR., in his capacity as Prosecuting Attorney, City and County of Honolulu,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF HAWAII

MOTION TO AFFIRM OR DISMISS

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Appellant,

v.

CHARLES F. MARSLAND, JR., in his capacity as Prosecuting Attorney, City and County of Honolulu,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF HAWAII

MOTION TO AFFIRM OR DISMISS

Pursuant to Rule 16(1) (b) and (d) of the Supreme Court of the United States, Appellee Charles F. Marsland, Jr., Prosecuting Attorney for the City and County of Honolulu, moves that the judgment below of the Hawaii Supreme Court be affirmed, or the appeal dismissed, because no substantial federal question is presented and the issue raised is of limited national importance.

STATEMENT OF THE CASE

Appellant's jurisdictional statement adequately depicts the case as it now stands.

ARGUMENT

1. The Question Presented is not Substantial Because the Ordinance Involved is a Reasonable Time, Place, and Manner Restriction.

This Court has long held as a general rule that a zoning regulation is not subject to constitutional attack unless it has no substantial relation to the public health, safety, and welfare. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 71 L.Ed. 303, 47 S.Ct. 114 (1926); *Gorieb v. Fox*, 274 U.S. 603, 71 L.Ed. 1228, 47 S.Ct. 675 (1927); *Nectow v. Cambridge*, 277 U.S. 183, 72 L.Ed. 842, 48 S.Ct. 447 (1928). The policy behind the Court's deferential attitude was expressed in *Warth v. Seldin*, 422 U.S. 490, 45 L.Ed.2d 343, 95 S.Ct. 2197 (1975), where it was said that:

> [z]oning laws and their provisions, long considered essential to effective urban planning, are peculiarly within the province of state and local legislative authorities. They are, of course, subject to judicial review in a proper case. But citizens dissatisfied with provisions of such laws need not overlook the availability of the normal democratic process.

422 U.S. at 508 n.18.

In essence, Appellant claims that application of the "rule of five" (R.O.H. § 21-1.10) to the devotees residing in their church violates their First Amendment rights, since residence in groups of more than five is necessary to the practice of their religion; therefore, Appellant urges that judicial review of the ordinance as applied is proper here. Appellant supports its claim by reference to this Court's decision in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 39 L.Ed.2d 797, 94 S.Ct. 1536 (1974),

arguing that a similar statute was upheld therein *only* because no fundamental right guaranteed by the Constitution was involved. (Jurisdictional Statement at 33.)

This Court has never held a statute unconstitutional merely because it involved a fundamental right. Zoning ordinances involving various fundamental rights have passed constitutional muster on numerous occasions. In *Young v. American Mini Theatres*, 427 U.S. 50, 49 L.Ed.2d 310, 96 S.Ct. 2440 (1976), the Court considered an ordinance which excluded "adult" theatres from residential areas and regulated their proximity to certain other facilities in areas in which they were permitted. Recognizing that the First Amendment permits reasonable regulation of the time, place, and manner in which otherwise protected rights are exercised, the Court found that the mere fact that a municipality confines such establishments to certain specified commercial zones or requires that they be dispersed to a certain degree does not render such ordinances unconstitutional. 427 U.S. at 62-63. It was emphasized that regulation of First Amendment protected activity by a zoning ordinance which imposed only a minimal burden on that activity is not constitutionally infirm especially where the incidental burden imposed is justified by evidence that the protected activity leads to the deterioration of the surrounding neighborhood. *Id.* at 71-72; *id.* at 78 (Powell, J., concurring).

In *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 68 L.Ed. 2d 671, 101 S.Ct. 2176 (1981), this Court considered the constitutionality of a zoning ordinance which, unlike the regulation involved in *Young v. American Mini Theatres, supra*, flatly prohibited all live entertainment, a form of expression clearly protected under the First Amendment. Assessing the Borough's claim that the ordinance was a reasonable time, place, and manner restriction, the Court found that such restrictions are reasonable only if they serve significant state interests without foreclosing "adequate alternative channels of communication." 452 U.S. at 75-76. The Court quoted from its opinion in

Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed.2d 222, 92 S.Ct. 2294 (1972), wherein it was stated that:

> The nature of a place, 'the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable.' . . . The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time. Our cases make clear that in assessing the reasonableness of a regulation, we must weigh heavily the fact that communication is involved; the regulation must be narrowly tailored to further the State's legitimate interest.

408 U.S. at 116-17 (footnotes omitted). Employing this analysis, the Court overturned appellant's conviction, holding that the Borough had failed both to identify interests making it reasonable to exclude all commercial live entertainment, and to present evidence establishing that live entertainment was incompatible with permitted uses. 452 U.S. at 74-75.

This Court employed a similar analysis when the protected liberty involved in the government regulation was the free exercise of religion. In *Cantwell v. Connecticut*, 310 U.S. 296, 84 L.Ed. 1213, 60 S.Ct. 900 (1939), the Court considered a state statute which required religious organizations to obtain a permit certifying them as bona fide religous causes in order to legally solicit funds. The Court found that the Free Exercise Clause

> embraces two concepts — freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. None would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of

> the guaranty. It is equally clear that a state may by general and nondiscriminatory legislation regulate the time, the place, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment.

310 U.S. at 303-04 (footnotes omitted). The Court concluded that conditioning appellants' right to solicit on obtaining a license from a state official empowered to decide whether or not the cause was, in fact, religious, despite the state's ample interest in protecting its citizens from fraudulent solicitation, was not a reasonable time, place, and manner restriction but rather an impermissible and undue burden on the free exercise of religion. 310 U.S. at 306-07.

This Court considered a statute regulating activities similar to those in *Cantwell*, in *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 69 L.Ed.2d 298, 101 S. Ct. 2559 (1981). Under the rules of a public corporation operating Minnesota's state fair, any person, group, or firm desiring to sell, exhibit, or distribute printed or written material within the grounds during the fair were required to do so only from a fixed location. In order to determine whether the rule was a valid time, place, and manner restriction on ISKCON's religious practice of Sankirtan, the public solicitation of funds in conjunction with the sale and distribution of literature, the Court referred to *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 48 L.Ed.2d 346, 96 S.Ct. 1817 (1976), wherein it was stated that "We have often approved restrictions of that kind provided that they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels for communication of the information." 425 U.S. at 771.

The Court found that the state fair rule in *Heffron* qualified under the content neutral standard both because it applied

equally to all who sought similar privileges and because space was allocated on a first-come, first-served basis, thereby obviating the possibility of content based discrimination by fair officials. 452 U.S. at 648-49. The rule also met the alternate channels requirement since ISKCON was free to pursue its religious practices both outside the fairgrounds and within the grounds, albeit at a fixed location. Moreover, ISKCON members were entirely free under the rule to mingle with the crowd and orally propagate their views. *Id.*

Whether the rule served a significant governmental interest was by far the most important question for the Court in *Heffron*. The State argued that the rule was necessary to assure the orderly flow of the fairgoing crowd, which averaged far in excess of 100,000 people in each of the 12 days the fair was open. The Court found that the Minnesota Supreme Court's decision to invalidate the rule, while recognizing the State's interest in preventing disorder, erroneously turned on the State's interest in avoiding the minimal disruption which would result from allowing ISKCON to pursue its activities. *Id.* at 651-53. Since the rule could not meaningfully be applied to other groups asserting First Amendment rights if it could not be applied to ISKCON, the proper inquiry was whether the State had a sufficient interest in preventing the disorder which would result from allowing *all* such groups the same unfettered use of the fairgrounds which ISKCON sought. *Id.* Viewed in these terms, the Court found that the State's interest was sufficient to justify the burdens imposed by the time, place, and manner restriction on the exercise of protected rights. *Id.* at 654.

Considering a commune's freedom-of-association challenge to an ordinance similar to the one challenged here, the court in *Palo Alto Tenant's Union v. Morgan*, 321 F.Supp. 908 (N.D. Cal. 1970), *aff'd*, 487 F.2d 883 (9th Cir. 1973), found the commune "legally indistinguishable from such traditional living groups as *religious communities* and residence clubs. The right to form such groups may be constitutionally pro-

tected, but the right to insist that these groups live under the same roof, in any part of the city they choose, is not." *Id.* at 911-12 (emphasis supplied). The court placed emphasis on the fact that there was no evidence to indicate that the ordinance was devised or enforced so as to discriminate against any group because of its racial, religious or political characteristics and observed that it affected only two of the many zones into which the city was divided, leaving such groups free to reside in those areas allowing apartment houses and multiple family dwellings. *Id.* at 912. The court concluded that the ordinance did not impinge upon a fundamental interest in such a way as to require the municipality to demonstrate that the ordinance served a compelling state interest by the least restrictive alternative. *Id.*

State courts have reached results consistent with this reasoning. In *Diakonian Society v. City of Chicago Zoning Board*, 390 N.E. 2d 843, 845 (Ill.App.Ct. 1978), the court observed that "[b]ecause of the interests protected by the first amendment to the United States Constitution, the impact of zoning upon church property cannot be determined in accordance with the usual rules; however, there is no doubt that the location of church property can be regulated in a proper case." In *Association For Educational Development v. Hayward*, 533 S.W.2d 579 (Mo. 1976) *(en banc)*, the Supreme Court of Missouri considered a religious society's claim that denial of a permit to inhabit a house in a residential district zoned to permit single family dwellings, churches, convents, monasteries, rectories and parish houses violated its right to the free exercise of religion. The court found that even though a municipality may not constitutionally exclude churches from a residential district, it did not follow that a city could not validly enact a zoning ordinance which prohibits the occupancy of a house in a residential district by more than a specified number of persons, even though they be members of a religious society, if they do not come within one of the specified exceptions to the rule. *Id.* at 587-89.

The court below reached a similar decision in *State v. Maxwell*, 62 Haw. 556, 617 P.2d 816 (1980) (*per curiam*). Appellant there challenged on free exercise grounds her conviction for operating a hula studio in a residential district under a zoning ordinance which did not specifically permit such a use, claiming that her teachings were religious in nature. The court noted that while "church" use was not a "permitted" use in appellant's neighborhood,

> the prohibition is not absolute . . . . Ordinances which exclude religious uses from the territory of a municipality are of doubtful validity . . . . The total exclusion of places of worship is regarded not only as a regulation not within the scope of the police power, but also as one which infringes upon freedom of religion guaranteed by the constitution . . . .
>
> In this case, however, church use is a special use in appellant's neighborhood and may be applied for and granted upon approval of the commission.

62 Haw. at 561-62 (citations omitted).

The statute involved in the present case applies, on its face, to all who would occupy a one family dwelling regardless of their political, social or religious affiliation. Appellant made no showing that the "rule of five" was discriminatorily applied in this case, despite the claim of amicus in the court below that enforcement of the law had been selectively and arbitrarily "directed at one of the less popular religions in Hawaii." (Jurisdictional Statement at 28.) Not only was there no direct evidence of purposeful discrimination against Appellant, but there was no circumstantial evidence from which it could be inferred that other groups, religious or otherwise, had been spared prosecution.

The ordinance involved also provides ample alternatives for the exercise of Appellant's religious beliefs. Far from banishing Appellant from the confines of the city, as was the case in *Schad v. Borough of Mt. Ephraim, supra*, the challenged ordinance is narrowly tailored to permit Appellant to carry on its

activities in a wide range of districts. Under R.O.H. §21-5.2 (c) (7), Appellant may apply for a conditional use permit as a monastery or convent in any one of the city's seven residentially zoned areas (App. at 1-6).[1] Further, since it appears that it is not the particular structure which is occupied but the manner in which it is consecrated that makes the temple what it is, Appellant's needs could easily be accommodated by a multiple family dwelling which is a permitted use in the R-4, R-5, R-6, and R-7 Residential Districts as well as in all four of the districts zoned for apartments (App. at 5;6-8).[2]

Given the lack of discriminatory motive and the incidental impact resulting from the application of the "rule of five" to Appellant, it remains for this Court to determine whether or not the interests which the statute serves are sufficient to justify the restriction on Appellant's activities. Appellant urges that only a compelling interest will suffice to justify the burden imposed by the ordinance, but the cases it cites to support this

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[1] Appellant has not pursued this course, however, and there is no way of knowing what action would be taken if such application is made, particularly because the ordinance does not define monastery or convent. The constitutional issue that may arise in this context is therefore not ripe for consideration.

[2] The structure which Appellant now occupies was designed and built as a one family dwelling. Upon its donation, Appellant extensively remodeled the building to accommodate its needs. Under these circumstances, it is clear that it is neither the structure nor its location which are important to Appellant but rather it is the ability to carry on its activities wherever it may house itself. Appellee contends that Appellant should not be able to circumvent the law merely because it wishes to take advantage of a devotee's largesse, particularly where there is no showing that only on *this* parcel and in *this* structure will its members be able to freely exercise their religion.

contention are inapposite. Both *Sherbert v. Verner*, 374 U.S. 398, 10 L.Ed.2d 965, 83 S.Ct. 1790 (1963) and *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 67 L.Ed.2d 624, 101 S.Ct. 1425 (1981), involved circumstances in which an individual was forced to choose between working and violating his religious beliefs or declining work inconsistent with his religious beliefs and foregoing government benefits. While in neither case was the individual compelled to violate his conscience, the burden on free exercise was substantial. *Sherbert, supra*, 374 U.S. at 403-04; *Thomas, supra*, 450 U.S. at 717-18. In *Wisconsin v. Yoder*, 406 U.S. 205, 32 L.Ed.2d 15, 92 S.Ct. 1526 (1972), the Court considered a statute which, though neutral on its face, compelled affirmative action (in violation of religious principles) by requiring an Amish student, who would otherwise pursue education after the age of 14 at home, to attend school until the age of 16. Because the coercion was direct and the infringement on free exercise rights substantial, the court found that "only those interests of the highest order" could justify the burden imposed by the statute. 406 U.S. at 215.

In the circumstances of the present case, Appellant is faced neither with a choice between religion and benefits otherwise available, as in *Sherbert* and *Thomas*, nor with a choice between religion and penal sanctions, as in *Yoder*. Here, the burden on Appellant's free exercise rights is neither direct nor substantial. The ordinance involved applies to Appellant, and to all others similarly situated, not because of its religious beliefs, but because of its choice of location. Further, Appellant's rights are burdened only to the extent that it chose to establish its temple in an area where such residential use is prohibited. Many other alternatives were open to it. Appellant would have this Court create a constitutional right, not previously recognized by this or any other court, to locate its facilities wherever it pleases.

This is not to suggest, however, that the enactment of zoning laws pursuant to the police power is unrestricted. To the contrary, where zoning laws affect the time, place, and manner in

which protected rights are exercised, they must serve a significant governmental interest. The interests asserted in the court below include freedom from the hazard of congested traffic and the attendant noise and air pollution, freedom to sleep through the night undisturbed by chanting and its musical accompaniment, and freedom from trespass and confrontation created by the coming and going of significant numbers of people. The desire to maintain placid areas within a metropolitan area was found to be a proper object of the police power in *Berman v. Parker*, 348 U.S. 26, 99 L.Ed. 27, 75 S.Ct. 98 (1954), wherein it was stated that:

> The concept of the public welfare is broad and inclusive . . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.

384 U.S. at 33. The city has a significant interest in preserving the character of its residential neighborhoods by the exclusion of incompatible uses while permitting and encouraging them in other districts. It is late in the day to complain that a zoning ordinance which imposes a reasonable time, place, and manner restriction on the exercise of protected freedoms is constitutionally impermissible.

2. *The case has no national significance.*

Despite the claim of amicus in the court below, Appellant has adduced no evidence to support the contention that the ordinance challenged here has ramifications not only for Hawaii's "traditional churches" but for the minority of religions whose practices resemble those of Appellant. Appellant has failed to show that either of these types of religious groups operate non-permitted residential facilities similar to those of Appellant, or that they have been or are subject to prosecution for violation of the "rule of five." While Appellant is surely correct that numerous municipalities across the nation have ordinances similar to the one challenged here, it has failed to

show that religious groups elsewhere operate similar facilities or that they have been or are subject to prosecution for violation of such ordinances. Under these circumstances, review by this Court would have minimal national impact.

CONCLUSION

Because the decision of the Hawaii Supreme Court is consistent with the views expressed by this Court the judgment should be affirmed, or the appeal dismissed, without further argument.

Dated at Honolulu, Hawaii: July 15, 1983.

Respectfully submitted,

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Appendix

APPENDIX

CONSTITUTIONAL PROVISIONS AND ORDINANCES

United States Constitution

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Revised Ordinances of Honolulu

COMPREHENSIVE ZONING CODE

ARTICLE I. GENERAL PROVISIONS.

§21-1.2. Legislative Intent.

This chapter is enacted to promote and protect the health, safety and general welfare of the people of the City and County. It is the intention of the City Council that the provisions of this chapter will implement the purpose and intent of the General Plan of the City by encouraging the most desirable use of land for residential, recreational, agricultural, commercial, industrial and other purposes, and the most desirable density of population in the several parts of the City, and by encouraging the most appropriate use and occupancy of buildings, and by promoting good civic design and arrangement. The provisions of this chapter provide reasonable standards with respect to the location, height, bulk, size of buildings and other structures, yard areas, courts, off-street parking facilities and other open spaces, density of population, and the use of buildings, structures, and land for trade, industry, business, residence, or other purposes.

§ 21-1.13. Application Procedures.

The application procedures specified in this section shall be followed in the administration of this chapter. Where more than one application would be required for a project, a single application shall be made addressing all issues required.

* * *

(c) Procedure C. Applications requiring the Director's public hearing.

(1) Applications following this procedure include:

* * *

(D) Conditional Use Permit.

(2) Application fees. An application fee of $100, plus $50 per acre or major fraction thereof up to a maximum of $1,000, shall be submitted with the application. Fees are not refundable.

(3) The completed application shall be filed with the Director. Upon such receipt, the Director shall:

(A) Submit a request in writing to the pertinent agencies and neighborhood boards for their comments and recommendations on the application. The agencies and boards shall within 45 days of receipt of request submit their comments and recommendations in writing to the Director.

(B) Hold a public hearing within the area no sooner than 45 days after acceptance of the completed application.

(4) Within 30 days after closing the public hearing, the Director shall:

(A) Approve as submitted;

(B) Approve with modifications and/or reasonable conditions; or

(C) Deny, with reasons for denial sent in writing to the applicant.

(5) Final action must be taken by the Director within 90 days from date of application.

ARTICLE 2. GENERAL REQUIREMENTS AND PROCEDURES APPLICABLE WITHIN VARIOUS DISTRICTS.

D. Conditional Uses and Structures.

§ 21-2.30. Application Requirements.

(a) Application for conditional use permit. A developer, owner or lessee (holding under a recorded lease the unexpired term of which is more than 5 years from date of filing of the application) may file with the Director of Land Utilization an application for a conditional use permit; provided that the conditional use sought is permitted in the particular district. The application shall be accompanied by a plan showing the actual dimensions and shape of the lot, the exact sizes and locations on the lot of existing and proposed buildings, if any, and the existing and proposed uses of structures and open areas; and by such additional information relating to topography, access, surrounding land uses and other matters as may reasonably be required by the Director in the circumstances of the case.

(b) Application procedure. The application shall be processed in accordance with Section 21-1.13 (c), Applications Requiring the Director's Public Hearing.

ARTICLE 5. RESIDENTIAL DISTRICTS.

A. R-1 Residential District.

§ 21-5.1. Legislative Intent.

The purpose of the R-1 Residential district is to provide areas for estate-type residential development. These areas would normally be located in the suburban and rural areas away from concentrated urban development.

§ *21-5.2. Use Regulations.*

Within an R-1 Residential district, only the following uses and structures shall be permitted.

(a) Principal uses and structures:

* * *

(2) Churches;

(3) Dwellings, one-family detached;

* * *

(c) Conditional uses and structures. Uses and structures hereinafter specified; subject to compliance with the provisions of part D of Article 2 hereof:

* * *

(7) Monasteries and convents;

B. R-2 Residential District.

§ *21-5.10. Legislative Intent.*

The purpose of the R-2 Residential district is similar to that of the R-1 Residential district. However, lots of a smaller size would be permitted in this district.

§ *21-5.11. Use Regulations.*

All of the uses and structures permitted in the R-1 Residential district shall be permitted in the R-2 Residential district except that stables shall not be allowed, as an accessory use or otherwise.

C. R-3 Residential District.

§ *21-5.20. Legislative Intent.*

The purpose of the R-3 Residential district is to provide areas for urban residential development, as contrasted with estate type development. To insure some privacy for those who may desire it, however, the minimum lot area requirement is set at 10,000 square feet.

§ *21-5.21. Use Regulations.*

All of the uses and structures permitted in the R-2 Residential district shall be permitted in the R-3 Residential district, except that detached guest houses and servants quarters shall not be allowed, as an accessory use or otherwise.

D. R-4 Residential District.

§ *21-5.30. Legislative Intent.*

The purpose of the R-4 Residential district is to provide areas for urban residential development on medium-sized lots. Some flexibility in housing types would be achieved by permitting duplex type facilities.

§ *21-5.31. Use Regulations.*

(a) In addition to the uses and structures permitted in the R-3 Residential district, duplex dwellings and two-family detached dwellings shall be permitted in the R-4 Residential district.

(b) Transitional uses and structures: Where an R-4 Residential district adjoins an apartment, hotel, business (excluding B-1 Neighborhood Business districts), or industrial district without an intervening street, alley or permanent open space over 25 feet in width and where lots separated by the district boundary have adjacent front yards, the first lot within the R-4 Residential district or 100 feet of such lot nearest the district boundary (whichever is less) may be used for:

(1) Multiple-family dwellings; subject, however, to the yard requirement of the district in which the zoning lot is located and all the other requirements of the A-1 Apartment district other than yard requirements.

E. R-5 Residential District.

§ *21-5.40. Legislative Intent.*

The purpose of the R-5 Residential district is to provide areas for concentrated urban residential development. Here

again some flexibility in housing types would be allowed by permitting duplex type facilities.

§ *21-5.41. Use Regulations.*

All of the uses and structures permitted in the R-4 Residential district shall be permitted in the R-5 Residential district.

F. R-6 Residential District.

§ *21-5.50. Legislative Intent.*

The purpose of the R-6 Residential district is to provide areas for concentrated urban residential development on minimum size lots. This would allow the development of property to maximum residential densities in areas where such intense development is desirable.

§ *21-5.51. Use Regulations.*

All of the uses and structures permitted in the R-5 Residential district shall be permitted in the R-6 Residential district.

G. R-7 Residential District.

§ *21-5.60. Legislative Intent.*

The creation of the R-7 Residential district is in recognition of the existence of areas developed with single-family dwellings on 3,500 square foot lots, some of which are within rehabilitation and conservation projects of the Honolulu Redevelopment Agency. This type of residential development is not considered desirable for the future and extensions, additions or new districts of this type are discouraged.

§ *21-5.61. Use Regulations.*

All of the uses and structures permitted in the R-6 Residential district shall be permitted in the R-7 Residential district.

ARTICLE 6. APARTMENT DISTRICTS.

A. A-1 Apartment District.

§ *21-6.1. Legislative Intent.*

The purpose of the A-1 Apartment district is to provide areas for multiple family use within a range of low to me-

dium land use intensities, and for non-residential uses which support or are compatible with the primary residential character. This district, permitting only low rise, low density apartment use, is compatible with adjacent single-family residential districts and is intended as a buffer between those districts and other denser and non-compatible districts. It is also a district which could be used in general application throughout the City and County.

§ *21-6.2. Use Regulations.*

Within an A-1 Apartment district, only the following uses and structures shall be permitted:

(a) Principal uses and structures:

* * *

(2) Multiple-family dwellings;

(3) Churches.

B. A-2 Apartment District.

§ *21-6.10. Legislative Intent.*

The purpose of the A-2 Apartment district is to provide areas for multiple-family and compatible non-residential uses of a medium land use intensity. It is intended that these areas be located where public facilities are adequate for this type of use and where medium density apartment development is desired but where a height limit for protection of views is deemed to be an important consideration.

§ *21-6.11. Use Regulations.*

Within an A-2 Apartment district, only the following uses and structures shall be permitted:

(a) Principal uses and structures:

(1) All of the principal uses and structures permitted in the A-1 Apartment district.

C. A-3 Apartment District.

§ *21-6.20. Legislative Intent.*

The purpose of the A-3 Apartment district is to provide areas for multiple-family and compatible non-residential uses of a medium land use intensity. It is intended that these areas be located where public facilities are adequate

for this type of development and where height of buildings is not an important criteria. Much of the multiple-family areas outside of the district of Honolulu may be designated for this classification. However, the designation of land within an A-3 Apartment district is intended to apply throughout the City and County.

§ *21-6.2. Use Regulations.*

All of the uses and structures permitted in an A-2 Apartment district shall be permitted in an A-3 Apartment district.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 1983, three (3) copies of the Motion to Affirm or Dismiss were delivered to John F. Schweigert, attorney of record for Appellant herein, at his office located at 250 South Hotel Street, 2nd Floor Auditorium, Honolulu, Hawaii, 96813.

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